

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. _____

STEPHEN SCHULER,
an individual,

Plaintiff,

vs.

ERCOLE USA, LLC, a Florida limited
liability company, d/b/a FBS - Fortified
and Ballistic Security,

Defendant.

_____ /

COMPLAINT

Plaintiff, Stephen Schuler, sues Defendant, Ercole USA, LLC, and alleges:

**JURISDICTION, PARTIES, VENUE,
AND CONDITIONS PRECEDENT MET**

1. This Court has diversity jurisdiction over this action pursuant to 28 U.S.C. § 1332 because there is complete diversity of citizenship between the parties and the amount in controversy exceeds \$75,000.00.

2. Plaintiff, Stephen Schuler (“Mr. Schuler”), is an individual over the age of eighteen, a citizen of the State of Illinois, and is otherwise *sui juris*.

3. Defendant, Ercole USA LLC (“Ercole”) is a Florida limited liability company with its principal place of business at 3724 NW 126th Ave., Coral Springs, Broward County, Florida. The sole member of Ercole is David Vranicar, a citizen of the State of Florida who resides at 5012 NW 86th Way, Coral Springs, Broward County, Florida. Ercole does business in Florida under the

registered fictitious name “FBS - Fortified and Ballistic Security.” Ercole, d/b/a FBS - Fortified and Ballistic Security, is hereinafter referred to as “FBS.”

4. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) and the mandatory venue provision in the subject contract between the parties, which states in relevant part: “The parties agree that (i) any claim of whatever character arising under this Contract or relating in any way, directly or indirectly, to the dealings between them during the term of this Contract shall be brought exclusively in a federal or state court of competent jurisdiction in Broward County, Florida....”

5. All conditions precedent to filing this action by Mr. Schuler have occurred, or have been performed, satisfied, waived or excused.

COUNT I – BREACH OF CONTRACT

6. Mr. Schuler realleges and incorporates paragraphs 1 through 5 above as if fully set forth herein.

7. On March 30, 2022, Mr. Schuler and FBS entered into a contract (the “Contract”), a true and correct copy of which is attached as **Exhibit A**.

8. Under the Contract, FBS agreed to, *inter alia*, sell, fabricate and deliver security doors, windows and related accessories in Mr. Schuler’s residence in Oak Park, Illinois.

9. The total project price was \$717,048.00.

10. Mr. Schuler paid FBS a deposit of \$358,524.00 (50% of the project price) (the “Deposit”).

11. Paragraph 1 of the Contract provides in relevant part: “Construction/fabrication of all doors, windows and/or other fixtures and equipment subject to this agreement **shall not begin until Client approves, in writing**, the drawings, plans and specifications for all items included in this agreement.” (emphasis supplied).

12. No such approval was provided by the “Client,” Mr. Schuler, for a legion of reasons.

13. The shop drawings prepared by FBS were materially deficient because, *inter alia*, the drawings: (a) lacked sufficient detail to be considered usable shop drawings; (b) failed to properly identify the windows in the basement of the residence; (c) failed to specify whether the windows were made from insulated glass, essential information for Mr. Schuler’s general contractor to obtain permits for installation; (d) contained measurements for the windows and doors significantly smaller than the units being replaced; and (e) failed to provide that the doors had transoms.

14. Pursuant the Contract, FBS knew that Mr. Schuler would be required to obtain permits to install the windows and doors contemplated by the Contract but its failures prevented Mr. Schuler and/or his contractors from seeking or obtaining the necessary permits.

15. FBS materially breached paragraph 1 of the Contract by failing to obtain Mr. Schuler’s written (or other) approval of the drawings, plans and specifications for the items in the Contract.

16. On August 18, 2022, Mr. Schuler terminated the Contract.

17. As a direct result of FBS’s breach of the Contract, Mr. Schuler has suffered damages, including the loss of his Deposit, which FBS has refused to return.

WHEREFORE, Plaintiff, Stephen Schuler, demands a judgment against Defendant, Ercole USA, LLC, d/b/a FBS - Fortified and Ballistic Security, for damages, attorney’s fees and costs pursuant to paragraph 17 of the Contract, prejudgment interest, post-judgment interest, court costs, and such other and further relief as the Court deems just and proper.

Dated: January 24, 2023

By: s/ Jeffrey S. Wertman

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